

Ahearn



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Trim-Flite, Inc.

File: B-229926.4

Date: July 28, 1988

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### DIGEST

While an agency is required to award a contract with reasonable promptness, 8-month period from closing date to award for a negotiated procurement is not per se unreasonable where agency conducts three reevaluations in response to offerors' complaints and protests. In any case, delay in award of contract generally is a procedural deficiency which does not provide a basis of protest because it has no effect on the validity of the procurement.

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### DECISION

Trim-Flite, Inc., protests the agency's delay in making award under DACWO-1-87-R-0056, issued by the United States Army Corps of Engineers for maintenance and operation services at Lake Sidney Lanier, Buford, Georgia. Trim-Flite seeks award of a contract or delay damages in the amount of \$228,250.34.

We dismiss the protest.

Trim-Flite was initially notified on December 17, 1987, that it was the successful offeror under the solicitation; the agency reaffirmed its determination to make award to Trim-Flite after two reevaluations of all proposals conducted in response to protests by other offerors. However, as a result of still further protests against the evaluation of proposals, the agency concluded that it was necessary to conduct a fourth evaluation with a revised government cost estimate and a new evaluation board.

Trim-Flite complains that the resulting delay in award after initial notification that it was the successful offeror was "adverse agency action" caused by agency error in conducting the procurement.

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We find the delay unobjectionable. A delay in meeting procurement milestones generally is a procedural deficiency which does not provide a basis of protest because it has no effect on the validity of the procurement. American Identification Products, Inc., B-227599, July 13, 1987, 87-2 CPD ¶ 42. While an agency is required to award a contract with reasonable promptness, the 8-month period here from closing date to award is not unreasonable per se given the attempts by the agency to correct the matters raised in offerors' complaints and protests through reevaluations. See Id. The fact that the delays may have been the result of initial agency errors in the procurement is irrelevant; once the errors occurred (Trim-Flite does not allege that errors were not made), the Corps' proper course of action was to take steps to correct the errors. The award delay was merely an unfortunate, but necessary, by-product of the Corps' proper action.

Trim-Flite contends that the agency "accidentally" disclosed its cost information to a competitor, W. B. & A., during that firm's protest to this Office. In a letter submitted by Trim-Flite, however, the agency denies release of Trim-Flite's proposal in connection with either W. B. & A.'s bid protest or that firm's Freedom of Information Act request concerning the subject solicitation. In any event, even assuming an improper price disclosure, there is no indication that it could have prejudiced Trim-Flite in any way, as the disclosure is alleged to have occurred after best and final offers (BAFOs) were received. Although the agency conducted subsequent reevaluations, there is no indication or allegation that any offeror was allowed to change its price through the subsequent rounds of BAFOs.

Finally, Trim-Flite seeks as damages the recovery of its proposal preparation and protest costs, as well as its lost profits. However, there is no legal authority that permits the recovery of anticipated profits through the bid protest process, even (in the presence) of wrongful agency action. Consolidated Devices, Inc., B-228065, Aug. 24, 1987, 87-2 CPD ¶ 201. Our Bid Protest Regulations provide only for the

recovery of bid preparation costs and the costs of filing and pursuing a protest, and then only where a protest is found to have merit. 4 C.F.R. § 21.6(d) (1988). Since Trim-Flite's protest is without merit, there is no basis for reimbursement of its proposal preparation or protest costs.

The protest is dismissed.

*for*   
Ronald Berger  
Deputy Associate  
General Counsel